IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION Nos: 4083 AND 4267 of 2005

-

-

WRIT PETITION N0: 4083 of 2005

Between:

1 The Government of Andhra Pradesh, Rep., by its Secretary, Finance and Planning Department, A.P., Hyderabad.
2 The Director of State Audit, Andhra Pradesh, Hyderabad.

..... PETITIONERS

AND

Smt.B.Vijaya Bharathi, W/o. Sri R.S.Prasad,
Directorate of State Audit, Andhra Pradesh, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue an appropriate writ more in the nature of WRIT OF CERTIORARI calling for the records pertaining to the order of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad dated 23-9-2004 in O.A.No.501/2004 and quash the same in the interest of justice.

WRIT PETITION No: 4267 of 2005

Between:

1 The Government of Andhra Pradesh, Rep. by its Secretary, Finance & Planning Department, Andhra Pradesh, Hyderabad.
2 The Director of State Audit, Andhra Pradesh, Hyderabad.
3 The District Audit Officer, State Audit, Ananthapur, Ananthapur District.

..... PETITIONERS

AND

Sri H. Narasappa, s/o Kullayappa,
O/o District Audit Officer, State Audit, Ananthapur, Ananthapur District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ more in the nature of Writ of Certiorari calling for the records pertaining to the order of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad dated orders dated 23-9-2004 in O.A.No. 39/2004 and order dated 30-11-2004 in Review M.A.No. 3253/2004 in O.A.No. 39/2004 and quash the same in the interest of justice.

Counsel for the Petitioners (in both the writ petitions): GP FOR SERVICES II

Counsel for the Respondents (in both the writ petitions): MR.Y.S.VENKATA RAO

The Court made the following:

-

ORAL COMMON ORDER:- (PER GB,J.)

Both the Writ Petitions can be disposed of by a common order, as the issue to be decided is the same.

2. The respondents were initially working in Andhra Pradesh Residential Educational Institutions Society, Hyderabad, as Trained Graduate Teacher and

Typist. However, they appeared for the regular selections to the direct recruitment posts conducted by Andhra Pradesh Public Service Commission. While so, the respondent in W.P.No.4083 of 2005 viz., Smt. B. Vijaya Bharathi, who was working as Trained Graduate Teacher, was selected in Group-I Service post and was posted as Assistant Audit Officer, State Audit, and therefore, she resigned to the said post on 06.12.1994 and joined in the State Audit Department on 07.12.1994. Similarly, the other respondent in W.P.No.4267 of 2005 viz., Sri H.Narasappa, who was working as Typist, was selected by the District Selection Committee, Ananthapur and he was posted as Typist in Audit Office, State Audit, Ananthapur. They claimed the protection of their last drawn salary in the earlier post while working in A.P. Residential Educational Institutions Society. Since, it was not accepted by the authorities, they filed O.As. before the Tribunal.

3. The Tribunal, after considering the matter, allowed the O.As., directing the authorities to fix their pay taking into consideration the last pay drawn in the earlier post. This decision was rendered by the Tribunal by following the decision rendered by it in an earlier O.A.No.5616 of 2000.

4. The Government filed review petitions seeking review and set aside the orders passed in O.A.Nos.39 of 2004 and 501 of 2004, but the said review petitions were dismissed, against which the present Writ Petitions are filed by the Government.

5. The learned Government Pleader submits that the order passed by the Tribunal is illegal and contrary to Rules. He further submits that even if any benefit was given to the similarly situated persons illegally, the petitioners cannot claim the same benefit and relies on the Judgment of the Apex Court reported in ***CHANDIGARH ADMINISTRATION AND ANOTHER v. JAGJIT SINGH AND ANOTHER***.

6. Learned counsel for the respondents submits that even though the respondents did not fall within the category of regular government service, yet similar benefit was given to other persons by virtue of the order passed by the Tribunal, the respondents were singled out in the matter of giving benefit of similarly situated persons.

7. We are afraid we cannot accept the contention raised by the learned counsel for the respondents.

8. Firstly, if any benefit has been given illegally, the same cannot be availed by other persons as laid down by the Supreme Court in Para No.8 of Chandigarh Administration's case (supra), which reads thus:

> *We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal unwarranted action must be corrected, if it can be done according to law – indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion,*

such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).

9. Coming to the question of merits of the case, it is not in dispute that in FR-22(iv), if a regular government servant is selected by direct recruitment and appointed to some other post, his last pay drawn shall be protected. FR-22(iv) is extracted below:

*"**FR-22:-** (iv) The pay of a regular Government servant (not appointed under emergency provisions) when appointed directly to another post, under the Government on selection by the A.P. Public Service Commission, shall be fixed in the new post at a stage which is not lower than the pay drawn by him in the earlier post."*

10. In the instant case, admittedly, the respondents are not government servants, and therefore, the protection of the last pay drawn is not available to them. Simply because the protection was given to them illegally by misinterpreting the provision, the same cannot be allowed to be claimed by others. Therefore, the respondents cannot claim the said benefit.

11. Under those circumstances, we held that the order of the Tribunal is not sustainable in law and accordingly, it is set aside. But, however, we find that if such benefit has been given to some other similarly placed persons, we find that it is a case for review and appropriate action in the matter *de-hors* the order of the A.P. Administrative Tribunal.

12. Accordingly, both the Writ Petitions are allowed. No costs.

_____

G. BIKSHAPATHY, J

_____

P.S. NARAYANA, J

Date: 11.03.2005

ES

To

1 The Secretary, Government of Andhra Pradesh,
Finance and Planning Department, A.P., Hyderabad.
2 The Director of State Audit, Andhra Pradesh, Hyderabad.

3 The District Audit Officer, State Audit, Ananthapur, Ananthapur District.

4 2 CCs to the G.P. for Services-II, High Court of A.P., Hyderabad, (OUT).

5 2 CD copies.

6 The Registrar, A.P. Administrative Tribunal, Hyderabad.